IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Writ Petition No. 1049 (M/B) 2001
(Old No. 3163/1986)

Date of decision: 29th October 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia

Hon'ble Mr. Justice Rajesh Tandon

- Whether the order/judgement should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgement? (Yes)

(Gurpreet)
P.A.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1049 (M/B) 2001
(Old No. 3163/1986)

Smt. Hasina Begum,
W/o Late Khan Bhadur Obbidulha Khan,
R/o Hermitage, Mallital,
District Nainital. ..... Petitioner

Versus

1. State of U.P.
2. Land Acquisition Officer, Nainital.
3. Kumaon University, Naintial,
   Through its Registrar. ……. Respondents

Mr. Sharad Sharma, Advocate for the petitioner.
Mr. B.D. Upadhyaya, Advocate for respondent No. 3, Kumaun University.
Mr. K.P. Upadhyaya learned Standing Counsel for respondent No. 1 & 2.

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble Rajesh Tandon, J.

Date: 29th October 2003

ORAL JUDGMENT: (Per Hon'ble S.H. Kapadia, C.J.)

1. This Writ Petition has been transferred from Allahabad High Court. The original Writ Petition bearing No. 3163 of 1986 was filed on 14th May 1986. By the said writ petition, Smt. Hasina Begum, wife of Khan Bhadur Obbidulha Khan, challenged the Award dated 31st March 1986 passed under Section 11 of the Land Acquisition Act 1984.

2. FACTS

Smt. Hasina Begum (Petitioner) is the second wife of Khan Bhadur Obbidulha Khan, who was a premier Rais of U.P. He was a Nawab of Dharampur in Bullandshahar district. Bibi Ahamdi Begum was the first wife of Khan Bhadur Obbidulha Khan. It is the case of the petitioner that Bibi Ahamdi Begum had, during her life time, created a Waqf, which covered number of properties in Nainital including "Hermitage".

On 26th March 1980, notification was issued under Section 4 of the Land Acquisition Act for acquisition of the property known as "Hermitage" admeasuring 4.22 acres. The notification was published in the Government Gazette on 31st May 1980. Notice under Section 4 was issued whereupon objections mere filed by one Shri M.A. Khan, on 20th May 1980, claiming to be a Mutwali of the Waqf. After hearing the objections, report under Section 5A of the Land Acquisition Act 1894 was submitted to the Government, which issued the notification under Section 6 of the Land Acquisition Act on 21st March 1983, which was published in the Gazette on 25th March 1983. Thereafter, notice under Section 9 of the Act was issued to Shri M.A. Khan, who sought time to file his claim. In the meantime, Shri M.A. Khan moved the Allahabad High Court by way of Writ Petition. There were numerous proceedings taken from time to time. In all the proceedings, the petitioner challenged the said acquisition. On 10th August 1983, compensation was claimed by Shri M.A. Khan as a Mutwali of the Waqf. Shri M.A. Khan also moved the Apex Court, however, he failed. The S.L.P. filed by him against the decision of the Allahabad High Court stood dismissed by the Supreme Court on 16th December 1983. Thereafter, Shri M.A. Khan led evidence in support of his claim for compensation and the Award was finally made on 31st March 1986. When the Government decided to take possession pursuant to notice under Section 12(2) of the Land Acquisition Act, Shri M.A. Khan obtained the stay from the Civil Judge, Nainital. Ultimately, the stay was vacated. But in the meantime, the present writ petition was filed by Smt. Hasina Begum. The acquisition is for the Kumaon University. In the original petition, the entire acquisition proceedings were challenged on the ground that the notification under Section 4 of the Land Acquisition Act was invalid for non-complaisance of statutory provisions of the Act. It was alleged that the property has not been described in the notification. That the acquisition was malafide. That no opportunity was given to the petitioner under Section 5A of the Act. That the acquisition was bad in law for non-compliance of Section 6 and for non-compliance of Chapter 7 of the

Land Acquisition Act. After the transfer of the writ petition to the Uttaranchal High Court, the petition has been amended. By the amendment application, the petitioner has added one more prayer to the petition, namely, a direction to the Government to consider the petitioner's offer of acquiring, by consent, the alternate sites namely Dharampur Lodge (measuring 4 acres) and Devdas Lodge (measuring 2 acres) and a part of Sukhatal (measuring 3 acres) in lieu of "Hermitage".

3. FINDINGS

We do not find any merit in the writ petition. The facts indicate that the land is acquired for a public purpose, namely Kumaon University. There is no procedural defect in the acquisition proceedings. Full opportunity as given to the owners during the acquisition proceedings. The acquisition proceedings are completed. Adequacy of compensation cannot be decided in the writ petition. Numerous proceedings were taken by the petitioner and others to challenge the acquisition proceedings. They have been dismissed. Appeals, there from, have been dismissed. Hence, there is no reason for us to interfere under Article 226 of the Constitution of India.

The matter was argued before us in September 2003. Mr. Sharad Sharma, learned Advocate appearing for the petitioner submitted that the petitioner is prepared to offer alternate sites to the Government in lieu of "Hermitage". He submitted that alternate sites, namely, Dharampur Lodge, Devdas Lodge and portion of Sukhatal were available for acquisition and therefore, the Government should be compelled to withdraw from the present acquisition of the property namely "Hermitage". He argued that the Mutwali, Shri M.A. Khan, had offered alternate lands during the acquisition proceedings, but the Government did not consider the offer. He, therefore, submitted that the Government should be compelled to withdraw from the acquisition on the petitioner's agreeing to the Government acquiring above mentioned Other Sites in lieu of "Hermitage". We do not find any merit in this argument. The acquisition proceedings have been

completed. Nothing remains to be done. There is no procedural irregularity in the acquisition. The objections of the petitioner have been disposed of after giving full opportunity to the Mutwali Shri M.A. Khan. This matter was argued before us in September 2003. We were told that the petitioner would like to move the Government with their offer. The matter was adjourned by this Court from time to time. However, it is not possible for this Court to wait any further. No provision has been shown to us by the learned Advocate for the petitioner by which we can compel the State Government to withdraw from the acquisition. Even the offer of alternate site was considered. The Government intended to acquire a compact plot. It is not for this Court to sit in appeal over the decision of the Government regarding the suitability of the plots. Hence, there is no merit in the writ petition.

4. Writ petition is dismissed. Interim orders, if any, stand vacated. No order as to costs.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

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